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10 Attorneys for Movant
11 Dexon Computer, Inc.

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
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17 CISCO SYSTEMS, INC., a Delaware
corporation and CISCO TECHNOLOGY,
18 INC., a California corporation,

19 Plaintiff,

20 v.

21 DEXON COMPUTER, INC., a Minnesota
22 corporation,

23 Defendant.
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Case No. 3:20-cv-4926-CRB

**RULE 60(a) NOTICE OF MOTION AND
MOTION TO CORRECT ORDER
DENYING DEFENDANT'S MOTION TO
DISMISS**

Date: July 9, 2021
Time: 10:00 a.m.
Location: Zoom

Hon. Charles R. Breyer
Presiding Judge
Courtroom 6

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant Dexon Computer, Inc. (“Dexon”) moves this Court under Rule 60(a) of the Federal Rules of Civil Procedure for an order correcting a mistake in the order denying Dexon’s motion to dismiss. The motion is based on this Notice of Motion and Motion; the following Memorandum of Points and Authorities, the [Proposed] Order; the record in this matter; and such other and further papers, evidence, and argument as may be submitted in support thereof.

Dated: May 28, 2021

Amanda R. Washton, member of
CONKLE, KREMER & ENGEL
Professional Law Corporation

By: /s/ Amanda R. Washton
Amanda R. Washton
Attorneys for Movant
Dexon Computer, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On May 20, 2021, the Court issued an order denying Dexon’s renewed motion to dismiss
3 for lack of personal jurisdiction (the “Order”). (Doc. No. 37). The Order incorrectly describes
4 Cisco’s allegations concerning the Product Activation Key Certificates (“PAKs”) that provide
5 access to Cisco software codes. (*Id.* at 3).

6 Namely, the Order incorrectly describes active involvement by Dexon beyond what is
7 alleged in Cisco’s first amended complaint. Specifically, the Order states that Cisco is alleging
8 Dexon obtained authentic access codes from genuine Cisco PAKs and actively or personally
9 transferred or “copied” such access codes to alleged counterfeit PAKs. (*Id.*). The Order provides
10 in relevant part:

11 Dexon would obtain Product Activation Key Certificates (PAKs)
12 containing Cisco software access codes, then copy the access codes
13 in counterfeit PAKs. *See id.* ¶¶ 61–62. Dexon customers who
14 purchased the counterfeit PAKs could thus ‘access Cisco software
15 without Cisco ever being paid for it.’ *Id.* ¶ 62.

14 *Id.*

15 In reality, consistent with its role as a passive middle man reseller, Dexon merely acquires
16 PAKs from its suppliers and provides them to its customers or end users without modification.
17 Consistent with this, Cisco’s First Amended Complaint does not allege any active or direct
18 “copying” or transferring of access codes to the alleged counterfeit PAKs by Dexon. Rather, the
19 allegations in paragraph 62 of the First Amended Complaint actually state as follows:

20 In every instance described in the table below, Dexon provided its
21 California customers with a counterfeit PAK, which copied a valid
22 code that enabled the customer to access Cisco software without
23 Cisco ever being paid for it.

23 (Doc. No. 32 at 22, ¶ 62).

24 Rule 60(a) of the Federal Rules of Civil Procedure authorizes the Court, on motion or on its
25 own, to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is
26 found in a judgment, order, or other part of the record.” In the present case, Dexon understandably
27 seeks to correct the mistaken assertion it is accused of directly, personally or actively copying or
28 transferring authentic access codes to alleged counterfeit PAKs. Consistent with this, the Order

1 should be revised on page 3 as follows to reflect the actual or verbatim allegations contained in
2 Cisco's First Amended Complaint:

3 Dexon provided its California customers with a counterfeit PAK,
4 which copied a valid code that enabled the customer to access Cisco
 software without Cisco ever being paid for it. *See id.* ¶¶ 61–62.

5 (Doc. No. 32 at 22, ¶ 62).

6 Accordingly, Dexon respectfully requests that the Court strike the original Order (Doc. No.
7 37), and issue a new order correctly reflecting the actual or verbatim allegations contained in Cisco's
8 First Amended Complaint.

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10 Dated: May 28, 2021

Respectfully submitted,

11 CONKLE, KREMER & ENGEL
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14 By: /s/ Amanda R. Washton
15 Amanda R. Washton
16 Attorneys for Movant
17 Dexon Computer, Inc.
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